Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1974.

No. 74-1541

BERNARD WEINSTOCK ET AL.,
APPELLANTS,

v.

TOWN OF HULL ET AL.,
APPELLEES.

ON APPEAL FROM THE
SUPREME JUDICIAL COURT OF MASSACHUSETTS.

JURISDICTIONAL STATEMENT.

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Attorneys for Appellants.

BATEMAN & SLADE, INC., BOSTON, MASSACHUSETTS.

In the
Supreme Court of the United States.

OCTOBER TERM, 1974.

No.

BERNARD WEINSTOCK ET AL.,
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v.

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APPELLEES.

ON APPEAL FROM THE
SUPREME JUDICIAL COURT OF MASSACHUSETTS.

JURISDICTIONAL STATEMENT.

Appellants appeal from a final judgment entered April 9, 1975, in the Superior Court of the Commonwealth of Massachusetts after rescript from the Supreme Judicial Court which affirmed a decree previously entered in the Superior Court declaring a Massachusetts statute, General Laws, c. 59, § 5, cl. 20, as amended by St. 1972, c. 144, § 1, constitutional and not in violation of the Fourteenth Amendment to the Constitution of the United States. The appellants submit this statement pursuant to Rule 15 of the Supreme Court of the United States to show that this court has jurisdiction of this appeal and that the federal constitutional question presented is substantial.

Opinion Below.

The only reported opinion of the Supreme Judicial Court is reported in Mass. Adv. Sh. (1975) 531, and in 323 N.E. 2d 867. A copy of that opinion is attached hereto as Appendix A. A copy of the final judgment after rescript is attached hereto as Appendix B. A copy of the notice of appeal filed on April 23, 1975, in the Superior Court is attached hereto as Appendix C.

Jurisdiction.

A petition for a declaratory decree was brought under Massachusetts General Laws, c. 231A, in the Superior Court by the ten named plaintiffs for themselves and on behalf of all others similarly affected against the town of Hull and the assessors and collector of taxes of the town, seeking a decree that so much of the provisions of Massachusetts General Laws, c. 59, § 5, cl. 20, as amended by St. 1972, c. 144, § 1, which exempts a person's household furniture and effects from the local property tax, if that property is "used or commonly kept in or about the dwelling of which he is owner of record . . . *and which is the place of his domicile*" (emphasis supplied), is unconstitutional as being repugnant to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

As stated above, a final judgment after rescript sustaining the validity of that statute was dated April 4, 1975, and entered by the Superior Court on April 9, 1975, and notice of appeal to this court was filed in the Superior Court on April 23, 1975.

Jurisdiction of the Supreme Court to review this decision by appeal is conferred by Title 28, United States Code, § 1257(2). The Supreme Judicial Court is the highest court of Massachusetts. The following decisions sustain jurisdiction of the Supreme Court to review the judgment on appeal:

WHYY, Inc. v. *Glassboro*, 393 U.S. 117 (1968).
Wheeling Steel Corp. v. *Glander*, 337 U.S. 562 (1949).
Hartford Steam Boiler Inspection & Insurance Co. v. *Harrison*, 301 U.S. 459 (1937).
Farmers Loan & Trust Company v. *Minnesota*, 280 U.S. 204 (1930).

Statute Involved.

The statute involved, General Laws, c. 59, § 5, cl. 20, as amended by St. 1972, c. 144, § 1, which the appellants contend is repugnant to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, provides an exemption of a person's household furniture and effects from the local property tax if that property is "used or commonly kept in or about the dwelling of which he is owner of record or for the use of which he is obligated to pay rent, *and which is the place of his domicile*" (emphasis supplied). The material portion of that statute is attached hereto as Appendix D.

Question Presented.

The single question presented by this appeal is whether the exemption from taxation of certain personal property in favor

of those persons who are domiciled within a municipality, while denying that exemption on the same classification of property to others who are merely temporarily resident therein but who are domiciled elsewhere, is unconstitutional as in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Statement of the Case.

This petition filed in the Superior Court by the ten named plaintiffs for themselves and all others similarly situated, against the town of Hull, its assessors and collector of taxes, was submitted for decision by the Superior Court on a case stated (R. p. 18).

Each of the petitioners is domiciled in various cities and towns in Massachusetts but not in the defendant town of Hull. Each owns his own home where domiciled. Each also owns a home in the defendant town which is occupied by him temporarily during the summer season each year. The household furniture and effects located in the summer homes are taxed each year and the petitioners are required to pay the tax. The same classification of personal property, that is, household furniture and effects, in the homes of those persons who are domiciled in the town is, by reason of the statute, entirely exempt from taxation. The town of Hull is also known as Nantasket Beach, a summer resort town. The plaintiffs are assessed a tax on the real estate owned by them in the town in which the household furniture is located at the same rate as the domiciliaries. There are approximately 1,300 persons who own their homes in the town and who reside there temporarily during the summer of each year but who are not domiciled therein. Each of these persons is assessed and pays the real

estate tax at the same rate as those who are domiciled there. These temporary or summer residents are all required to pay the personal property tax from which those domiciled in the town are exempt. The household furniture tax is based upon the valuation of the property at the same rate as the real estate tax which, during the year 1973, was $101 per $1,000 valuation and for the first six months of 1974 at the rate of $50.50 per $1,000 valuation. The tax rate is comprised of two items, the school rate and the general rate. For the calendar year 1973 the school rate was $45.92, and the general rate was $55.08 per $1,000 valuation. The federal constitutional question was raised in the Superior Court by an amendment to the petition by adding thereto the following: "Said statute is also in violation of the Fourteenth Amendment to the Constitution of the United States" (R. p. 14), and was considered and passed on by the trial judge. The Superior Court judge made findings, rulings, and order for decree (R. pp. 24-32), and a final decree was entered in that court on June 7, 1974. It recited that the exemption did not violate the Fourteenth Amendment (R. p. 33). From that final decree an appeal was taken by the appellants to the Appeals Court and, upon the allowance of an application for direct appellate review, the case was transmitted to the Supreme Judicial Court (see certification of Thomas Dorgan, Clerk of the Superior Court). The opinion of the Supreme Judicial Court declared the statute constitutional and affirmed the Superior Court decree (Appendix A). Thereafter, pursuant to the rescript from the Supreme Judicial Court, the Superior Court entered a final judgment on April 9, 1975, in accordance with the decree entered in the Superior Court (R. p. 39). This appeal followed (R. p. 40).

The Federal Constitutional Question Presented is Substantial.

The Massachusetts statute clearly discriminates for tax purposes between persons domiciled in a city or town and those merely temporarily residing there and who are domiciled elsewhere. The town of Hull is a beach resort. About 1,300 persons own their homes there, which they occupy during the summer season each year. Many more thousands of persons own their seasonal homes from the Berkshires in the western part of the state along the eastern coastline to Cape Cod and the offshore islands. Those persons are equally affected by the statute and are assessed a tax on their household furniture and effects annually. Considering that in Hull, with a year-round population of only about 10,500 (R. p. 20), the total value of furniture assessed under the statute against non-domiciliaries was $890,770 (R. p. 18), it is plain that in all other cities and towns in the state which are resort areas and in which second homes are owned containing the usual household furniture and effects, the taxes on this classification of property affect many thousands of persons and likely amount to millions of dollars. This tax is a recurring one annually. The seasonal home owners in all municipalities in the state are required to pay a very large sum of money each year as a tax on property from which the domiciliaries there are entirely exempt. This constitutes a substantial deprivation of property and an unequal application of the laws.

The opinion of the Supreme Judicial Court that "The classification of household furniture and effects into two groups, one subject to assessment and the other not, presents no substantial question of the denial of equal protection of the laws under the Constitution of the United States," is challenged by this appeal.

A few of the cases analogous to this one are:

Township of Hillsborough v. *Cromwell*, 326 U.S. 620 (1946), in which the court stated (p. 623) that:

> "The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment."

Dunn v. *Blumstein*, 405 U.S. 330 (1972).
Williamson v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489 (1955).
County of Alameda v. *City and County of San Francisco*, 19 Cal. App. 3d 750 (1971).

The two categories — domiciliary and non-domiciliary — are treated differently for tax purposes, whereas their relationship to Massachusetts does not differ. The temporary resident is subject to more onerous and burdensome tax treatment and consequently is denied the equal protection of the laws.

This federal constitutional question affects many thousands of persons in Massachusetts, the amount of money involved is very substantial and this is a continuing assessment and tax year after year to which they are subject.

It is, therefore, submitted that the question involved in this case is substantial and requires plenary consideration, with briefs on the merits and oral argument, for resolution.

Respectfully submitted,

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Appendix A.

Supreme Judicial Court of Massachusetts.

BERNARD WEINSTOCK & others *vs.* TOWN OF HULL & others.[1]

WILKINS, J. The plaintiffs bring this bill for declaratory relief to challenge the constitutionality of that portion of G.L. c. 59, § 5, Twentieth, as amended through St. 1972, c. 144, § 1, which exempts a person's household furniture and effects from the local property tax, if that property is "used or commonly kept in or about the dwelling of which he is [the] owner of record or for the use of which he is obligated to pay rent, *and which is the place of his domicile*" (emphasis supplied).

The plaintiffs are residents of the Commonwealth who are domiciled in municipalities other than Hull. Each plaintiff owns a dwelling in Hull where he or she resides temporarily during the summer season. The assessors have assessed the plaintiffs' household furniture and effects in their summer homes in Hull, and each plaintiff has received a personal property tax bill issued by the collector of taxes for the year 1973 and for the first six months of 1974. The parties agree that an actual controversy exists concerning the constitutionality of G.L. c. 59, § 5, Twentieth, as applied to the plaintiffs' household furniture and effects assessed by the town.

This matter was heard in the Superior Court on a case stated. The judge rejected the plaintiffs' assertion that an exemption from local taxation of household furniture and effects only if they are kept in a dwelling which is a person's

[1] The defendants in addition to the town of Hull are the assessors and the collector of taxes.

domicil violates art. 4 of Part II, c. 1, § 1, of the Constitution of the Commonwealth and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. The plaintiffs appeal.[2] We turn first to a consideration of the plaintiffs' challenge based on provisions of the Constitution of the Commonwealth.

The plaintiffs claim that the requirement of Part II, c. 1, § 1, art. 4, that "assessments, rates, and taxes" must be "proportional and reasonable" invalidates a local personal property tax which distinguishes between household furniture and effects owned by a resident of a municipality and similar property owned by a nonresident of that municipality. The plaintiffs also rely on art. 10 of our Declaration of Rights.

We have observed that a literal interpretation of the Constitution "might lead to the invalidation of all exemptions." *Newhall* v. *Assessors of Brookline*, 329 Mass. 100, 103 (1952). See *Opinion of the Justices*, 324 Mass. 724, 730 (1949). Our cases have recognized, however, the right of the Legislature to grant exemptions which have a reasonable relationship to the constitutional purpose of equality and proportionality, although lacking mathematical precision. See *Opinion of the Justices*, 195 Mass. 607, 609 (1908). Thus an exemption from local personal property taxation of all household furniture,

[2] The final decree declared that the exemption of G.L. c. 59, § 5, Twentieth, did not violate Part II, c. 1, § 1, art. 4, of the Massachusetts Constitution or the Fourteenth Amendment to the Constitution of the United States. It declared additionally that the assessment and tax on the plaintiffs' household furniture and effects were legal and that the statutory distinction between domiciliaries and nondomiciliaries was neither discriminatory nor unconstitutional.

We agree with the trial judge's conclusion that this is an appropriate occasion for declaratory relief. Similar relief has been granted in cases challenging the constitutionality of tax statutes. See cases cited in *East Chop Tennis Club* v. *Massachusetts Commn. Against Discrimination*, Mass. , - (1973) (Mass. Adv. Sh. [1973] 1611, 1616-1617).

wherever situated, to a value of $1,000 has been sustained. *Day* v. *Lawrence*, 167 Mass. 371 (1897). An increase in that exemption to $5,000 was upheld in *Newhall* v. *Assessors of Brookline*, 329 Mass. 100 (1952).[3] Where, however, an exemption has "been such as materially to impair the constitutional principle of proportional taxation of property," the exemption has been said to violate the constitutional requirement of proportionality. *Opinion of the Justices*, 324 Mass. 724, 733, (1949) (a five-year exemption for newly constructed residential buildings said to be bad). *Opinion of the Justices*, 344 Mass. 766 (1962) (a $5,000 exemption from assessment of real estate owned by a resident of the Commonwealth and occupied as his domicil said to be violative of Part II, c. 1, § 1, art. 4, of the Massachusetts Constitution and art. 10 of the Declaration of Rights, because it would discriminate against rent payers, the owners of rental properties and others).

We regard the operation of G.L. c. 59, § 5, Twentieth, in its distinction between household furniture and effects kept in or near a person's domicil, and those that are not, as reasonable and not productive of unconstitutional disproportionality. Each plaintiff, and every other individual who has household furniture and effects in a dwelling which he owns or rents, is entitled to the exemption from local property taxes on that property, if the dwelling is his place of domicil. In this respect there is equality of treatment among all potential taxpayers. The loss of that advantage in the municipality where a person has a vacation home presents no greater prospect of disproportionality of taxation than the exemption itself or some dollar limit on the exemption, both of which we have upheld.

The classification of household furniture and effects into two groups, one subject to assessment and the other not, presents

[3] By the time of the *Newhall* case, the exemption for household furniture and effects was extended to such property only if it were situated in the place of the owner's domicil. This limitation was adopted in 1918. See St. 1918, c. 42, § 1, amending St. 1909, c. 490, Part I, § 5, Eleventh, a predecessor of G.L. c. 59, § 5, Twentieth. It has been continued since then.

no substantial question of the denial of equal protection of the laws under the Constitution of the United States. Any distinction in a tax statute which has a rational basis will survive a challenge under the equal protection clause. See *Frost* v. *Commissioner of Corps. & Taxn.* Mass. , - (1973),[a] app. dism. for want of substantial Federal question, 414 U.S. 803 (1973); *Carmichael* v. *Southern Coal & Coke Co.* 301 U.S. 495, 509 (1937); *San Antonio Independent Sch. Dist.* v. *Rodriguez,* 411 U.S. 1, 40-41 (1973); *Kahn* v. *Shevin,* 416 U.S. 351, 355-356 (1974). Certainly a tax applicable to household furniture and effects located in a summer residence, but not applicable to such property located in one's domicil, has a rational foundation.

Decree affirmed.

[a] Mass. Adv. Sh. (1973) 389, 399-401.

Appendix B.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPERIOR COURT
No. 98090 EQ.

BERNARD WEINSTOCK ET AL.,
v.
TOWN OF HULL ET AL.

FINAL JUDGMENT AFTER RESCRIPT.

This cause came on to be heard upon a motion for the entry of a final judgment after rescript from the Supreme Judicial Court, and thereupon, upon consideration thereof, it is hereby ordered that the following final judgment be entered:

1. The exemption of G.L. c. 59, § 5, cl. 20 does not violate part 2, c. 1, § 1, Art. 4 of the Massachusetts Constitution.

2. The aforesaid exemption does not violate the Fourteenth Amendment of the Constitution of the United States.

3. Assessment made by the respondent assessors on the household furniture and effects of the petitioners and the tax levied thereon are legal.

4. So much of the statute (G.L. c. 59, § 5) as permits or requires the assessment and taxation of the personal property to the petitioners while exempting from taxation those who are domiciled in the Town of Hull on

the same classification of property is neither discriminatory nor unconstitutional.

By the Court (McNaught, J.)
MICHAEL J. DONOVAN,
Assistant Clerk.

Entered April 4, 1975

Assented to as to form only

Frank G. Lichtenstein
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Appendix C.

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, ss. SUPERIOR COURT
No. 98090 EQ.

BERNARD WEINSTOCK ET AL.
v.
TOWN OF HULL ET AL.

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES.

[Filed April 23, 1975.]

Notice is hereby given that the plaintiffs, Bernard Weinstock, et al, hereby appeal to the Supreme Court of the United States from the final judgment entered in this court on April 9, 1975, after rescript from the Supreme Judicial Court of Massachusetts which declared that Mass. General Laws c. 59, s. 5, cl. 20, exempting from taxation persons domiciled in the defendant town of Hull on their household furniture and effects located in the town while at the same time taxing others who are not so domiciled but who have temporary residences there during the summer of each year and who own property of the same type and classification, is constitutional and not in violation of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

This appeal is taken pursuant to 28 U.S.C.A. s. 1257(2).

The Clerk will please prepare a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the record on appeal to the Supreme Judicial Court, the rescript issued by

the Supreme Judicial Court, the final judgment after rescript, and this notice of appeal.

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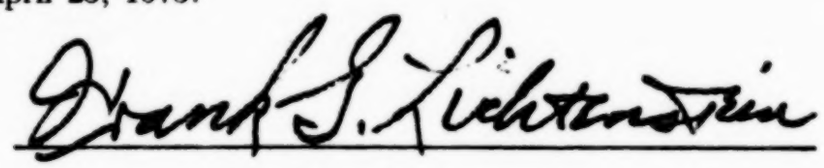
I, FRANK G. LICHTENSTEIN, attorney for the plaintiffs, and a member of the Bar of the Supreme Court of the United States, certify that in accordance with the provisions of Rules 10 and 33 of the Supreme Court of the United States, I served a copy of the foregoing Notice of Appeal to The Supreme Court of the United States, on the Hon. Francis X. Bellotti, Attorney General of the Commonwealth of Massachusetts, by mailing the same to the State House, Boston, Massachusetts, and on Haskell A. Lampke, Esq., attorney for defendants, by mailing the same to his office address at 85 State Street, Boston, Massachusetts, both being so mailed by prepaid postage on April 23, 1975.



Frank G. Lichtenstein

Appendix D.

MASSACHUSETTS GENERAL LAWS C. 59, § 5, CL. 20, AS AMENDED BY ST. 1972, C. 144, § 1

Certain Property and Polls Exempted.

The following property shall be exempt from taxation. . . . The wearing apparel, farming utensils and cash on hand of every person and the tools of his trade if a mechanic, to any amount; his household furniture and effects, including jewelry, plate, works of art, musical instruments, radios, television sets and garage or stable accessories, in storage in a public warehouse kept and maintained under chapter one hundred and five or used or commonly kept in or about the dwelling of which he is owner of record or for the use of which he is obligated to pay rent, and which is the place of his domicile. . . .

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ON APPEAL FROM THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS.

Motion to Dismiss or Affirm.

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Motion to Dismiss or Affirm.

Pursuant to Rule 16 of the Rules of the Supreme Court of the United States, Richard S. Moskow, in association with Haskell A. Lampke, Town Counsel for the Town of Hull, the Board of Assessors, and the Collector of Taxes, of the Town of Hull, Massachusetts, move for dismissal of this appeal on the ground that it does not present a substantial federal question.

Alternatively, the appellees move to affirm the decision of the Supreme Judicial Court of Massachusetts, on the ground that a rational basis supports the existence of the statute and exemption in dispute.

Statement of the Case.

The appellants maintain summer residences in the Town of Hull, but are domiciled elsewhere in the Commonwealth of Massachusetts. The Town of Hull assesses and levies upon appellants both real estate and personal property taxes. The assessment and levy of the personal property tax on household furnishings and effects of the appellants has given rise to the petition for declaratory relief in this case.

Massachusetts General Laws, c. 59, § 5, cl. 20, as most recently amended by St. 1972, c. 144, § 1, exempts certain personal property from local taxation. The statute provides as follows:

> " . . . his household furniture and effects, including jewelry, plate, works of art, musical instruments, radios, television sets and garage or stable accessories, in storage in a public warehouse . . . or used or commonly kept in or about the dwelling of which he is owner of record or for the use of which he is obligated to pay rent, *and which is the place of his domicile.*" (Emphasis added.)

Whereas the appellants are not domiciled in Hull, the Town of Hull has by virtue of this statute placed a tax on their personal property as well as that of others who maintain summer residences in Hull, or who, while domiciled in Hull, maintain other residences.

The appellants contend that, whereas domiciliaries are exempted and non-domiciliaries are not exempted from the tax in Hull, the exemption denies them equal protection of the laws, violating both the Massachusetts and Federal Constitutions.

The appellees have maintained that the statute in question is constitutional on its face and as applied to the appellants.

The Superior Court of Suffolk County found the statute constitutional. The Supreme Judicial Court of Massachusetts affirmed the judgment of the Superior Court. The appellants seek to obtain an appeal to the Supreme Court of the United States.

Argument.

The appellants contend that a substantial federal constitutional question exists in that an application of the statute, Massachusetts General Laws, c. 59, § 5, cl. 20, results in a violation of the equal protection clause of the Fourteenth Amendment. An examination of the statute will reveal that appellant's charge is unfounded.

Massachusetts General Laws, c. 59, § 5, cl. 20, applies to all persons owning property within the Commonwealth of Massachusetts. The statute exempts certain property, in this case household furnishings and effects, from taxation, if located in the domicile of the individual.

The classification created by the statute is that of domiciliaries owning personal property. All domiciliaries have the benefit of this exemption. The appellants, being domiciled in cities and towns in Massachusetts other than Hull, have the full benefit of the exemption offered by the statute, in common with other domiciliaries.

Those domiciliaries owning additional homes are subject to taxation on household furnishings and effects located in homes which are not their domicile.

Therefore, it can be seen that there is no denial of equal protection of the law in that all members of the class created

— domiciliaries — are treated equally. The appellants have been treated the same as all other domiciliaries.

This Court has previously affirmed a state's power and exercise of latitude in delineating a particular class as a subject for taxation. *Carmichael* v. *Southern Coal Company*, 301 U.S. 495, 509 (1937). The Supreme Court has continued to recognize the need of the states to have ample discretion in the levying of taxes. *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522, 526 (1959).

This Court recently dismissed for want of a substantial federal question a Massachusetts case wherein the Supreme Judicial Court upheld a state taxing statute. Any distinction in a tax statute which has a rational basis and in which all members of the class are treated equally will survive a challenge under the equal protection clause. *Frost* v. *Commissioner of Corporations & Taxation*, Mass. Adv. Sh. (1973) 389, 399-401.

Appellees submit that no substantial federal question is presented and therefore this appeal should be dismissed.

Appellees further submit to this Court that, even assuming, *arguendo*, that a federal question exists, this Court should affirm the decision appealed from, as a rational basis exists for the classification created by the statute. *Lindsley* v. *National Carbonic Gas Co.*, 220 U.S. 61, 78 (1911).

The Massachusetts legislative body, as the General Court, could in its discretion have determined that all domiciliaries should receive the benefit of an exemption from a tax on their household furnishings and effects, as, practically speaking, these items, when located in their domiciles represent necessities of life and are required for one's well-being and sustenance. However, those who maintain additional homes elsewhere and have personal property therein are maintaining a luxury which is certainly a proper subject of taxation.

The Court has recognized the need for allowing states large leeway in creating classifications in order to produce taxation systems. *Lehnhousen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973). The General Court saw fit to create an exemption for domiciliaries, this being a rational classification to carry out a probable legislative desire to aid homemakers in providing for necessities of a normal life. Whereas this reason alone fulfills the rationality test for this challenge of the validity of the statute, further discussion is not warranted.

Conclusion.

For the reasons stated above, the Town Counsel of the Town of Hull on behalf of the appellees respectfully urges this Court to dismiss this appeal for want of a substantial federal question, or, in the alternative, to affirm the judgment of the Superior Court of the Commonwealth of Massachusetts and the decision of the Supreme Judicial Court of the Commonwealth of Massachusetts.*

Respectfully submitted,

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*The research assistance of James B. Lampke of New England School of Law is gratefully acknowledged.

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APPELLANTS,

v.

TOWN OF HULL, NAZZARENO DEVITO JR., DANIEL J. HENDERSON, STANLEY MACLEOD, STANLEY L. GOULD, and ROBERT L. MEADE, as they comprise the Board of Assessors of the Town of Hull, and WINIFRED H. KELLEY, as she is the Collector or Taxes of the Town of Hull,
APPELLEES.

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

BRIEF OF THE AMICUS CURIAE, THE ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS, IN SUPPORT OF THE APPELLEES

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BRIEF OF THE AMICUS CURIAE, THE ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS, IN SUPPORT OF THE APPELLEES

Interest of the Attorney General of the Commonwealth of Massachusetts

The Attorney General of the Commonwealth of Massachusetts (hereinafter "the Commonwealth") has appeared before the Superior Court and the Supreme Judicial Court of the Commonwealth, and has submitted briefs and ar-

gued orally in defense of Mass. Gen. Laws Ann. ch. 59, § 5, cl. 20 (1975), the statute herein challenged. He was entitled to so appear pursuant to the provisions of Mass. Gen. Laws Ann. ch. 231A, § 8 (1975), which states in pertinent part:

> "If a question of constitutionality is involved in any proceeding under this chapter [Massachusetts Declaratory Judgment Statute, Mass. Gen. Laws Ann. ch. 231A, §§ 1-9 (1975)], the attorney general shall also be notified of the proceeding and be entitled to be heard."

As the chief law officer of the Commonwealth, *see Secretary of Administration and Finance* v. *Attorney General,* Mass. Adv. Sh. (1975) 665, 676-678, the Attorney General wishes to continue full participation in this litigation.

Argument

Mass. Gen. Laws Ann. ch. 59, § 18 (1975) provides that various items of personal property shall be subject to taxation by the Commonwealth. However, Mass. Gen. Laws Ann. ch. 59, § 5, cl. 20 (1975) specifically exempts from such taxation certain items "used or commonly kept in or about the dwelling of which [an individual] is the owner of record . . . and which is the place of his domicile."

In identifying the personal property which shall be subject to taxation, Mass. Gen. Laws Ann. ch. 59, § 18 (1975), by definition, establishes a class of individuals who are subject to taxation. This class, composed of all individuals owning personal property located within the Commonwealth, is the relevant one for purposes of analyzing the appellants' equal protection claim. The appellants appear to contend that within this class, Mass. Gen. Laws Ann. ch. 59, § 5, cl. 20 (1975) discriminates between domiciliaries of the Commonwealth possessing only one home and

domiciliaries, such as the appellants, possessing a home additional to that which constitutes their place of domicile. Their contention is erroneous. Ownership of a second home is wholly extraneous to the terms of the statutory exemption. All domiciliaries of the Commonwealth, and specifically all of the appellants, derive the benefit of the exemption with respect to property located in their places of domicile, regardless of whether or not they own additional homes. Accordingly, for purposes of an equal protection analysis, the exemption creates no cognizable distinction between domiciliaries owning one home and those owning homes additional to their places of domicile.

In creating an exemption for property located within one's domicile, Mass. Gen. Laws Ann. ch. 59, § 5, cl. 20 (1975) does establish a distinction within the class identified by Mass. Gen. Laws Ann. ch. 59, § 18 (1975). That distinction, however, is one between domiciliaries of the Commonwealth, who enjoy the benefit of the exemption, and non-domiciliaries of the Commonwealth, who do not. Since the appellants do enjoy the benefit of the statutory exemption, they suffer no injury from such a distinction. They therefore possess no standing to challenge this classification. *See Sierra Club* v. *Morton,* 405 U.S. 727, 738-741 (1972).

Nevertheless, assuming for the sake of argument that the appellants were to possess the necessary standing to challenge the exemption on the ground that it discriminates against non-domiciliaries, the burden would be on the appellants "to negative every conceivable basis which might support" the exemption. *Madden* v. *Kentucky,* 309 U.S. 83, 88 (1940). The burden of establishing irrationality is especially acute in the context of taxation. In rejecting an equal protection challenge to an Illinois constitutional provision which subjected corporations and similar entities to *ad valorem* taxation, but excluded individuals from such taxation, this Court stated, "Where taxation is concerned

and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973) (footnote omitted).

The appellants have failed to discharge their burden of establishing the irrationality of MASS. GEN. LAWS ANN. ch. 59, § 5, cl. 20 (1975). There are many rational bases supporting the exemption created by the statute. For example, the legislators of the Commonwealth could properly have determined that personal property additional to that kept in one's place of domicile constitutes a luxury and is justly taxable, while property kept in one's place of domicile is not. As this basis alone satisfies the lenient test of rationality to which the challenged statute is subject, further enumeration of possible bases is unnecessary.

Conclusion

For the reasons stated above, the Attorney General of the Commonwealth of Massachusetts respectfully urges that the Court dismiss this appeal for want of a substantial federal question, or in the alternative, that it affirm the judgment of the Superior Court of the Commonwealth of Massachusetts.*

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Appendix of Statutes

MASS. GEN. LAWS ch. 59, § 5, cl. 20 (1975)

The wearing apparel, farming utensils and cash on hand of every person and the tools of his trade if a mechanic, to any amount; his household furniture and effects, including jewelry, plate, works of art, musical instruments, radios, television sets and garage or stable accessories, in storage in a public warehouse kept and maintained under chapter one hunded and five or used or commonly kept in or about the dwelling of which he is owner of record or for the use of which he is obligated to pay rent, and which is the place of his domicile; and, to an amount not exceeding a total value of five thousand dollars, in respect to boats, fishing gear and nets owned and actually used by him in the prosecution of his business if engaged exclusively in commercial fishing; provided, that failure to comply with the provisions of sections twenty-nine and sixty-one relative to the filing of a list of his personal estate with the assessors shall not be a bar to an abatement of the tax, if any, imposed upon such personal estate.

MASS. GEN. LAWS ch. 59, § 18 (1975)

All taxable personal estate within or without the Commonwealth shall be assessed to the owner in the town where he is an inhabitant on January first, except as provided in chapter sixty-three and in the following clauses of this section:

First, All tangible personal property, including that of persons not inhabitants of the commonwealth, except ships and vessels used in or designed for use in carrying trade or commercial fishing, shall, unless exempted by section five, be taxed to the owner in the town where it is situated on January first.

Second, Machinery employed in any branch of manufacture or in supplying or distributing water, including ma-

chines used or operated under a stipulation providing for the payment of a royalty or compensation in the nature of a royalty for the privilege of using or operating the same, and all tangible personal property within the commonwealth leased for profit, or, in the case of domestic business and foreign corporations as defined in section thirty of chapter sixty-three, machinery used in the conduct of the business, shall be assessed where such machinery or tangible personal property is situated to the owner or any person having possession of the same on January first.

Third, Personal property of deceased persons, before the appointment of an executor or administrator, shall be assessed in general terms to the estate of the deceased, and the executor or administrator subsequently appointed shall be liable for the tax so assessed as though assessed to him.

Fourth, Personal property of joint owners or tenants in common, other than partners, may be assessed to one or more of such owners, and any person so assessed shall be liable for the whole tax.

Fifth, Underground conduits, wires and pipes laid in public ways, except such as are owned by a street railway company, and poles, underground conduits and pipes, together with the wires thereon or therein, laid in or erected upon private property or in a railroad location by any corporation, except poles, underground conduits, wires and pipes of a railroad corporation laid in or erected upon the location of such railroad, and except poles, underground conduits, wires and pipes laid in or erected upon any right of way owned by a street railway company, shall be assessed to the owners thereof in the towns where laid or erected.

Sixth, Partners, whether residing in the same or different towns, shall be jointly taxed under their firm name, for all tangible personal property belonging to the partnership, except ships and vessels used in or designed for use in carrying trade or commercial fishing, in the place where such property is situated. Each partner shall be liable for the whole tax.

Seventh, Ships or vessels, other than yachts and other pleasure craft, owned by a partnership, shall be assessed to the several partners in their places of residence, if within the commonwealth, proportionally to their interests therein; but the interests of the several partners residing without the commonwealth shall be assessed to the partnership in the place where its business is carried on.